

Voluntary Paternity Establishment

What you should know about
establishing paternity in South Dakota.



Paternity

Paternity means fatherhood or the relationship of a father.

Establishing paternity means that either a judge signs a court order stating who the legal father is, genetic testing establishes a 99 percent probability of paternity, or the father and mother voluntarily sign a paternity affidavit naming the father of the child.



Paternity should be established if the parents of the child were not married at the time the mother became pregnant or at the time of the birth of the child.

Importance of Establishing Paternity

Both parents and the child have the right to a parent-child relationship. Both parents and the child deserve an opportunity to develop, enjoy and grow in this relationship.

Identity:

Your child has the right to know both parents and is entitled to the sense of belonging that comes from knowing both parents.

Medical:

Your child should know if he or she has inherited any health problems which may not be detected at birth or in childhood.

Responsibility:

The father has the right to know and the responsibility to support his son or daughter. The mother has the right to get help and support from the father in raising the child.

Money:

Both parents have a legal obligation to support their children. One parent may not be able to support the child on their own.

Benefits:

Your child has the right to access benefits from both parents, such as Social Security, medical and life insurance benefits, inheritance rights, veteran's benefits or others.

Voluntarily Acknowledging Paternity

To voluntarily acknowledge paternity, both parents must sign a paternity affidavit under oath (a copy of the affidavit is included in this booklet). This paternity affidavit is also available at the hospital or medical clinic where the child is born or through the South Dakota Department of Social Services, Department of Health or the local Register of Deeds Office.

Both the mother and biological father must provide their address, date of birth and Social Security number on the affidavit. Also, their signatures must be notarized before a notary public. The hospital may be able to provide notary service. The completed, signed and notarized affidavit may then be turned into the hospital or may be completed at a later date and forwarded to the South Dakota Department of Health's Vital Records Program in Pierre.

Are the parties legally required to sign the paternity affidavit?

No. Signing a paternity affidavit is a **voluntary act** by the mother and alleged father. If the affidavit is not signed, genetic testing or subsequent legal proceedings in circuit court may be required to establish paternity.

What are the legal consequences of signing a paternity affidavit and voluntarily acknowledging paternity?

If both parties sign the affidavit under oath, the law will presume that the named father is the biological father of the child. The mother, her attorney or the Department of Social Services may then proceed to establish and enforce a child support obligation without any further legal proceedings to establish paternity.

If a paternity affidavit is signed, can paternity be disputed at a later date?

Yes. Either party can rescind the affidavit by commencing an action in circuit court within 60 days of signing the affidavit unless any administrative or judicial proceeding related to the child has already been commenced, including proceedings to establish a child support obligation.

Under South Dakota law, a party can also contest paternity for a period of up to three years after signing the paternity affidavit on the basis of fraud, duress or material mistake of fact. In order to do so, the party will be required to commence an action in circuit court.

How long after the birth of a child can paternity be established?

South Dakota and federal laws allow establishment of paternity any time before the child reaches the age of 18. It is in the interests of all parties to establish paternity as soon as possible following the birth of the child. Also, the mother and alleged father may voluntarily sign a paternity affidavit any time, regardless of the age of the child, in order to have the alleged father's name placed on the birth certificate.

Can the mother and alleged father sign the paternity affidavit if one or both of them are minors?

Yes. The mother and alleged father may voluntarily acknowledge paternity by completing and signing the paternity affidavit even if both or one of them is under 18.

What if the alleged father refuses to acknowledge paternity?

If the alleged father refuses to voluntarily acknowledge paternity and sign the paternity affidavit, the mother or the Department of Social Services, in appropriate circumstances, may initiate a paternity suit in circuit court to resolve the matter with legal proceedings.



For more information, you may want to visit with an attorney or contact the Division of Child Support.

What if the mother is currently married and her husband is not the father of the child?

If the mother is married and her husband is not the biological father of the child, a three-way paternity affidavit can be signed by the mother, the alleged father and the husband.

The three-way paternity affidavit can then be filed with the Department of Health's Vital Records Program for inclusion in the child's birth record.

Also, the alleged father can sign the paternity affidavit even if he is married to someone else. The three-way paternity affidavits are available at the hospital where the child was born,



the Department of Health and the Department of Social Services.

If both the mother and alleged father sign the paternity affidavit, does that mean the child's last name must be the same as the alleged father's?

No. The child's last name does not have to be the same as the alleged father's last name just because she and the alleged father complete and sign the paternity affidavit.

The mother and alleged father must agree on the last name of the child which must be either the surname of the mother or the father. Both the mother and alleged father's names will appear on the birth record and birth certificate.

What is paternity or genetic testing and when is it needed?

Genetic testing compares the DNA, or bodily substances, of the child, mother and alleged father to determine the probability that the alleged father is the biological father. These tests are extremely accurate. They can determine if the alleged father is not the biological father. They can determine with a 99 percent or higher degree of certainty that the alleged father is the child's biological father.

Genetic testing may be necessary when the alleged father questions paternity or does not wish to voluntarily acknowledge paternity. Upon request of the mother or the alleged father, the Department of Social Services or the circuit court may order genetic testing in appropriate cases. Genetic test results which establish a 99 percent or higher probability of paternity also create a presumption that the alleged father is the biological father of the child and allows the establishment of a child support obligation without further legal proceedings to establish paternity. If the alleged father is found to be the biological father of the child, he may be held responsible for the genetic testing costs.

How can I request genetic testing?

Consult an attorney regarding the best method for arranging paternity genetic testing. In certain circumstances, the Department of Social Services can also arrange genetic testing.

What about child support?

If the parents and the child are not living in the same household, and the parents are not jointly supporting the child, the non-custodial parent will be expected to pay child support based upon the South Dakota child support guidelines.

These guidelines consider the number of children and the incomes of both parents to compute a child support amount. The non-custodial parent may also be ordered to provide health insurance coverage for the child, pay a portion of medical expenses and pay a portion of the child care expenses, if any.

The non-custodial parent will still be required to pay child support even if he or she moves to another state. States have mutual agreements and laws with each other to enforce and collect child support.

If the custodial parent is receiving Temporary Assistance to Needy Families (TANF) or is receiving child support enforcement services, the Division of Child Support will proceed to establish and enforce an appropriate child support order based upon the child support guidelines. Otherwise, the custodial parent may consult an attorney regarding the best method for arranging paternity genetic testing. In certain circumstances, the DSS can also arrange genetic testing.

How long will the parties be required to pay child support in South Dakota?

Under South Dakota law, and unless a court orders otherwise or the child is legally emancipated, the parents are required to support their child until the child reaches the age of 18, unless the child is a full-time student in a secondary school, and then until the child graduates or attains the age of 19, whichever comes first.

Does the father have the right to see or visit the child?

Yes. In most circumstances, both parties have the legal right to see and visit the child.

Visitation can be established by a mutual agreement of the parties or established by a circuit court order. Following the establishment of paternity, either parent also has the legal right to request the circuit court to change the visitation or custody arrangements based upon the best interests of the child. The Division of Child Support **will not** get involved in issues or disputes related to either custody or visitation.



Who can I contact for more information?

If you have any questions about the information in this booklet or questions about your legal rights and responsibilities, please visit with an attorney or you can contact the Department of Social Services' Division of Child Support.

Address: 700 Governors Drive, Pierre, SD 57501

Phone: 605-773-3641

Email: DCS@state.sd.us

Website: www.dss.sd.gov/childsupport

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VOLUNTARY ACKNOWLEDGMENT OF PATERNITY

Parents: You may wish to make a copy of this completed form for your own records. The original Voluntary Acknowledgment of Paternity will be placed in a sealed file. A copy can only be obtained by court order.

South Dakota law permits the establishment of paternity by voluntary acknowledgment if the mother of the child was not married at the time of the child's conception, birth or anytime in between. **This form must be signed by both parents in front of a notary public.**

Child's Information Currently on the Birth Record:			
1. Name First Middle Last Suffix (Jr., etc.)			1A. Date of Birth (Month, Day, Year)
1B. Place of Birth City County State			1C. Gender (Mark one) ____ Male ____ Female
Surname of Child to be Entered on New Birth Certificate (Complete even if surname does not change)			
2. The Surname of the Child Shall Henceforth be Shown on the Birth Record As: Surname Suffix (Jr., II, etc.)			
Mother's Information Currently on the Birth Record:			
3A. Name First Middle Last			3B. Maiden Surname
3C. Social Security Number (See Back)	3D. Birthplace- State (if not USA, name country)		3E. Date of Birth (Month, Day, Year)
3F. Daytime phone #			
3G. Current Address Street Address/PO Box City State Zip			
Father's Information to be Entered on the Birth Record			
4A. Name First Middle Last Suffix (Sr., II., etc.)			4B. Date of Birth (Month, Day, Year)
4C. Social Security Number (See Back)	4D. Race (White, Indian, Black, etc)		
4E. Birthplace – State (if not USA, name country)			
4F. Current Address Street Address/PO Box City State Zip			Inside City Limits? ____ Yes ____ No

I acknowledge that I am the biological mother of the child; the above information is true; I was not married to anyone at the time of the child's conception, birth or anytime in between; I am voluntarily signing this Acknowledgment for the purpose of establishing paternity of the child.

I acknowledge that the rights, responsibilities, alternatives and legal consequences, associated with signing this affidavit as outlined in the Voluntary Paternity Establishment Booklet (BR000CSE2), have been explained to me, orally and/or in writing, and I understand the same. I understand that an affidavit of paternity signed by both parties creates a presumption of paternity and allows for the establishment of a child support obligation without further legal proceedings to establish paternity. I understand that either party can seek circuit court rescission of this affidavit within 60 days of signing the affidavit, unless an administrative or judicial proceeding has already been commenced regarding the child.

Mother's

Signature _____

Subscribed and sworn to before me this _____ day of _____, _____. (SEAL)

Notary Public _____

My commission expires: _____

I acknowledge that I am the biological father of the child; the above information is true; I am voluntarily signing this Acknowledgment for the purpose of establishing paternity of the child.

I acknowledge that the rights, responsibilities, alternatives and legal consequences, associated with signing this affidavit as outlined in the Voluntary Paternity Establishment Booklet (BR000CSE2), have been explained to me, orally and/or in writing, and I understand the same. I understand that an affidavit of paternity signed by both parties creates a presumption of paternity and allows for the establishment of a child support obligation without further legal proceedings to establish paternity. I understand that either party can seek circuit court rescission of this affidavit within 60 days of signing the affidavit, unless an administrative or judicial proceeding has already been commenced regarding the child.

Father's Signature _____

Subscribed and sworn to before me this _____ day of _____, _____. (SEAL)

Notary Public _____

My commission expires: _____

SOCIAL SECURITY NUMBER - "Disclosure of the social security number is mandatory pursuant to SDCL 25-7A-56.2 and the Social Security Act § 205(c)(2), 42 U.S.C. § 405(c)(2) (1998). The social security number will be used by the Department of Social Services to facilitate collecting child support and locating child support obligors, and by the Internal Revenue Service for determining tax benefits based on support or residence of children."

PLEASE SUBMIT THE ORIGINAL NOTARIZED PATERNITY AFFIDAVIT. ANY ALTERATIONS MAY VOID THE AFFIDAVIT.

A PATERNITY AFFIDAVIT CAN ONLY BE USED TO CHANGE THE CHILD'S SURNAME AND ADD THE FATHER'S INFORMATION. CHANGES TO THE CHILD'S FIRST AND MIDDLE NAME OR OTHER INFORMATION ON THE RECORD REQUIRES AN AMENDMENT. SEE <http://www.state.sd.us/doh/VitalRec/Vital.htm> FOR APPLICATIONS TO AMEND A VITAL RECORD. ONCE THE REQUESTED ADDITIONS/CORRECTIONS HAVE BEEN MADE ON THE BIRTH RECORD TO THE CHILD'S SURNAME AND THE FATHER'S NAME AND INFORMATION, NO FUTURE CHANGES WILL BE MADE ON THESE ITEMS EXCEPT BY COURT ORDER.

ONCE THE DEPARTMENT OF HEALTH HAS RECEIVED THE PATERNITY AFFIDAVIT, IT WILL BECOME PART OF A SEALED AND CONFIDENTIAL FILE WHICH CAN ONLY BE OPENED BY COURT ORDER OR AT THE REQUEST OF THE DEPARTMENT OF SOCIAL SERVICES. THEREFORE, IF **YOU WISH TO KEEP A COPY OF THIS AFFIDAVIT, PLEASE MAKE ONE BEFORE YOU SEND IT IN.**

FEES:

PREPARING NEW BIRTH CERTIFICATE WITH PATERNITY\$5.00

(Paternity relates only to the addition of the father's name and information and changes to the child's surname. Any other changes to the birth record must be done using the amendment process.)

CERTIFIED COPY OF NEW BIRTH CERTIFICATE. \$10.00 each

A completed application must be submitted to obtain a copy of the record. Applications can be obtained on the internet at <http://www.state.sd.us/doh/VitalRec/Vital.htm>, from the local Register of Deeds or by calling (605) 773-4961.